

THE RAILROAD COMPETITION AND SERVICE IMPROVEMENT ACT OF 2007

This legislation corrects some decisions of the Surface Transportation Board (STB) that have denied rail customers access to railroad competition, addresses the inadequacies in the rate reasonableness process of the STB, improves service to rail customers, and provides new remedies for rail carriers where inadequate remedies exist. This legislation does not regulate any rail activity that currently is not regulated and does not provide any new authority for one railroad to operate on the tracks of another.

Section 1 The title of the bill shall be the “Railroad Competition and Service Improvement Act of 2007”

TITLE I ENSURING COMPETITION IN THE RAIL INDUSTRY

Section 101 Clarification of Rail Transportation Policy and Directives for Implementation

Provides implementation directives to the Surface Transportation Board (STB) to (1) ensure to the maximum extent possible effective competition among rail carriers at origins and destinations, (2) ensure reasonable rates for rail customers in the absence of competition, and (3) ensure consistent, efficient, and reliable rail transportation service for rail customers.

Section 102 Requirement for Railroads to Provide Rates for Transportation

“Quote a Rate”: At the request of a rail customer, a rail carrier shall establish a rate for transportation and provide service requested by the customer between any two points on the system of that carrier where traffic originates, terminates, or may reasonably be interchanged.

Section 103 Elimination of Barriers to Competition Between Class I, Class II, and Class III Rail Carriers

“Paper Barriers”: (1) The STB may not authorize a transfer of interest in a rail line from a Class I rail carrier to a Class II or Class III rail carrier, if the transfer would (A) restrict or limit the ability of the Class II or Class III carrier to interchange traffic with other carriers, (B) restrict or limit competition of rail carriers in the region in a manner that would violate our nation’s antitrust laws, or (C) require higher per capita interchange rates for Class II or Class III carriers to interchange traffic with other rail carriers. (2) Any party to an above-mentioned transaction or any affected party may request that the STB review the transaction to determine whether any restriction has resulted. If the STB finds that such a restriction exists, the STB shall declare the restriction unlawful and terminate the restriction unless termination would materially impair the ability of an affected carrier to provide service or would be inconsistent with public interest.

Section 104 Reciprocal Switching

This provision removes the “public interest” hurdle (a higher standard than intended by Congress imposed by the Interstate Commerce Commission (ICC), predecessor to the

STB, in the mid-1980s) that has made the process for ordering reciprocal switching so difficult for shippers. The provision requires the STB to approve reciprocal switching agreements when it finds such an agreement to be in the public interest.

Reciprocal switching refers to the traditional agreements by which railroads agree to move cars from one rail system to another. This provision increases the usefulness of this pro-competition provision by prohibiting the STB from requiring evidence of anti-competitive conduct. Congress, in the Staggers Rail Act of 1980, directed that, the ICC could require reciprocal switching on reasonable terms when it found that such an arrangement was in the “public interest.” In the mid-1980’s, the ICC decided – without further congressional authority - that such agreements were in the public interest only when the ICC found “anti-competitive conduct.” Since the ICC added this test from antitrust law, no petitioner has ever obtained reciprocal switching on reasonable terms from the ICC or its successor agency, the STB.

Section 105 Areas of Inadequate Rail Competition

Allows a Governor to petition the STB to have all or part of his or her state designated as an “area of inadequate rail competition.” To qualify, the area must be served by essentially one carrier, most of the rates must exceed 180 percent of the direct cost to the railroad of the transportation and the state or area of the state must have suffered significant economic adversity because of this lack of competition. Within 60 days after the STB so designates a state or area of the state, the STB shall fashion a remedy for this lack of rail competition. Within one year after enactment, the Rail Customer Advocate of the Department of Transportation shall review and report to Congress on the effectiveness of this section.

TITLE II IMPROVING SERVICE TO RAIL CUSTOMERS

Section 201 Rail Service

Within seven days of receiving a formal or informal complaint from a customer about rail service, the STB shall post on its website a description of the complaint, identifying the customer only upon written consent of the customer. Within five days of the complaint’s resolution, the STB shall update the description to include the details of the resolution. The STB shall report annually to Congress on their resolution of service complaints.

This section also requires the STB to respond within 90 days to petitions for injunctive relief from an unlawful railroad practice. The STB has the authority under current law to provide injunctive relief, but does not make timely decisions under this authority.

Section 202 Railroad Obligation to Serve

This section clarifies that rail carriers shall provide “reliable and efficient” service to rail customers.

Section 203 Damages Due to the Failure of Timely Freight Delivery

This section empowers the STB to award damages to rail customers for lack of timely delivery.

Section 204 Rail Customer Advocate

This section creates in the United States Department of Transportation an Office of Rail Customer Advocacy. The head of the Office of Rail Customer Advocacy shall be the Rail Customer Advocate, to be appointed by the Secretary of Transportation in consultation with the Secretary of Agriculture. The Advocate's duties shall include: accepting rail customer complaints; participating as a party in proceedings of the STB on petitions regarding the regulation of rail transportation, and initiating such actions; collecting and maintaining information regarding the cost and efficiency of rail transportation; and carrying out other duties prescribed by the STB.

TITLE III PRIOVIDING ACCESS TO A REASONABLE RATE PROCESS

Section 301 Rights of Rail Customers

Rail customers subject to railroad market dominance shall have the right of access to a process maintained by the STB for determining if the rate in question is reasonable. The STB shall ensure that the process is accessible to and cost effective for all affected rail customers.

Section 302 Improvement of Rate Reasonableness Standards

The STB is directed to develop a rate challenge process that is similar to the rate regulatory systems of public service commissions and the Federal Energy Regulatory Commissions. Under this rate regulatory system, the reasonableness of a rate shall be based on the cost of providing the service plus a reasonable rate of return; a final determination shall be made within nine months after a petition has been filed with the STB; and the process shall be cost effective and provide the rail customer access to the information needed for the petition. The Stand Alone Cost (SAC) standard may only be used after the new method is developed, at the election of a rail customer, if the petition for review had already been filed.

This provision amends the "market dominance" test, which is prerequisite for shippers' seeking a "rate reasonableness" determination by the STB, to reflect rail marketplace conditions. Further, it shifts the burden of proof to require a railroad to demonstrate that its rates are reasonable if a shipper has demonstrated it is operating under a railroad's market dominance.

Section 303 Filing Fees on Petition for Captive Rate Relief

Fees charged for the filing of a complaint may not exceed those charged by district courts of the United States for a comparable filing.

Section 304 Arbitration of Rail Disputes

A new arbitration option is established wherein the STB shall submit to final offer arbitration monetary disputes related to the transportation of “any agricultural product, including timber, paper, and fertilizer”. Either the railroad or the rail customer may request the arbitration. The arbitrator may only choose the final offer of the rail customer or the rail carrier. Each party shall choose one arbitrator, and those two arbitrators shall choose a third from a roster of arbitrators to be established by the Secretary of Transportation.

TITLE IV AUTHORITY TO INVESTIGATE

Section 401 Authority of Board to Investigate and Suspend Certain Railroad Actions

This section empowers and directs the STB to investigate unreasonable rail practices and to suspend those practices under certain circumstances: the practice in question applies to more than one person, the Board has substantial reason to believe that the practice in question is not legal, and if the practice is not legal, making complete restitution to rail customers will be difficult. The suspension is to remain unless and until the railroad justifies the practice to the satisfaction of the Board.

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